

REMARKS

Claims 11 and 13 to 20 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

With respect to paragraph three (3) of the Final Office Action, while the objections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to better clarify or define the subject matter. Withdrawal of the objections is therefore respectfully requested.

With respect to paragraph four (4) of the Final Office Action, claims 18 and 19 were rejected under 35 U.S.C. § 102(e) as anticipated by Spitz et al., U.S. Patent No. 6,774,476.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Final Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 18 has been rewritten to provide the features that *the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal, and the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of*

one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal.

As to the “Spitz” reference, Figures 2 through 7 only indicate two mounting plates, an electrically conductive insert, and semiconductor substrates. This arrangement wholly differs from the presently claimed subject matter since the phase terminal is not structurally arranged identically to one of the positive terminal or the negative terminal. Therefore, “Spitz” does not identically disclose (or even suggest) the feature that *the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal*, as provided for in the context of claim 18, as presented. Further, nowhere does “Spitz” identically disclose (or suggest) that the phase terminal is situatedly rotated by 180° about the longitudinal axis of the terminal lug. Therefore, “Spitz” does not identically disclose (or even suggest) the feature of *the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claim 18 and its dependent claim 19 are allowable.

It is therefore respectfully requested that the anticipation rejections be withdrawn.

With respect to paragraph five-point-one (5.1) of the Final Office Action, claims 11, 13, 14, 15, 17, 18, and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Watanabe, Japanese Patent Publication No. JP-60101958, in view of Acker et al., U.S. Patent No. 6,538,878.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

While the rejections may not be agreed with, to facilitate matters, claims 11, 17, and 18 have been rewritten to provide the feature that *the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal*. Further, claim 18 has been rewritten to provide the feature of *the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal*.

As to the “Watanabe” reference, the Final Office Action admits that “Watanabe does not disclose [sic] the phase terminal is arranged identically to one of the positive terminal or the negative terminal.” (Final Office Action, pp. 5 and 6). Further, the Final Office Action admits that “Watanabe does not disclose [sic] the phase terminal being situated [sic] rotated by 180° about the terminal axis of the terminal lug in relation to one of the positive terminal or the negative terminal.” (Final Office Action, p. 8).

As to the “Acker” reference, the Final Office Action asserts that “Acker teaches in Fig. 1 the phase terminal is arranged identically to one of the positive terminal or the negative terminal.” (Final Office Action, pp. 5 and 7). However, “Acker” merely refers to a positive conducting plate 16, a negative conducting plate 18, and conductive lugs 20, 22, and 24. All three components of “Acker” are structurally different from each other, as shown in Figures 1, 3, and 4. In addition, it is respectfully submitted that the present application does not describe a mere rearrangement of parts, as suggested by the Final Office Action, but recites a positive, structural feature which provides, for example, manufacturing and assembly benefits.

Therefore, the “Acker” reference does not disclose (or suggest) the feature that *the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal*, as provided for in the context of claims 11, 17, and 18, as presented. Further, “Acker” does not disclose that the phase terminal is situatedly rotated by 180° about the longitudinal axis of the terminal lug. Therefore, “Acker” does not disclose (or suggest) the feature of *the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal*, as provided for in the context of claim 18, as presented.

Therefore, the combination of the “Watanabe” reference and the “Acker” reference does not disclose (or suggest) the feature that *the phase terminal is structurally arranged*

identically to one of the positive terminal or the negative terminal, as provided for in the context of claims 11, 17, and 18, as presented. In addition, the combination of the “Watanabe” reference and the “Acker” reference does not disclose (or suggest) the feature of *the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claim 11 and its dependent claims 13, 14, and 15, claim 17, and claim 18 and its dependent claim 20, are allowable.

It is therefore respectfully requested that the obviousness rejections be withdrawn.

With respect to paragraph five-point-two (5.2) of the Final Office Action, claims 16 and 19 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of the “Watanabe” reference and the “Acker” reference, further in view of Irmmler, International Patent No. WO-7900814.

Claim 16 depends from claim 11, as presented, and is therefore allowable for at least the same reasons as claim 11, as presented, since the tertiary “Irmmler” reference does not cure – and is not asserted to cure – the critical deficiencies of the combination of the “Watanabe” reference and the “Acker” reference. As to the “Irmmler” reference, Figure 1 only refers to three metal washers having different diameters. Therefore, “Irmmler” does not disclose (or suggest) the feature that *the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal*, as provided for in the context of claim 11, as presented.

Claim 19 depends from claim 18, as presented, and is therefore allowable for at least the same reasons as claim 18, as presented, since the tertiary “Irmmler” reference does not cure – and is not asserted to cure – the critical deficiencies of the combination of the “Watanabe” reference and the “Acker” reference. As to the “Irmmler” reference, Figures 1 and 4 do not disclose (or suggest) the features that *the phase terminal is structurally arranged identically to one of the positive terminal or the negative terminal*, and *the phase terminal being situatedly rotated by 180° about the longitudinal axis of the terminal lug in relation to an orientation of one of the structurally identically arranged positive terminal or the structurally identically arranged negative terminal*, as provided for in the context of claim 18, as presented.

Accordingly, claims 16 and 19 are allowable.

Conclusion

It is therefore respectfully submitted that all of claims 11 and 13 to 20 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 2/27/2008

By: 

Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646

leg. no.
33,865

Harmon C.
DEBITOR